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**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

PLAYER'S NETWORK, INC.

Debtor.

Case No.: 20-12890-mkn
Chapter 11

**REPLY MEMORANDUM OF CREDITOR
AUCTUS FUND, LLC IN SUPPORT OF ITS
MOTION FOR AN ORDER, PURSUANT TO
11 U.S.C. §§105(A), 363, AND 541 (I)
AUTHORIZING ISSUANCE OF
CONVERSION NOTICES; (II) REQUIRING
DEBTOR TO COMPLY WITH THE
NOTICES; AND (III) DEEMING THE
AUTOMATIC STAY INAPPLICABLE OR, IN
THE ALTERNATIVE, GRANTING RELIEF
FROM THE AUTOMATIC STAY PURSUANT
TO 11 U.S.C. § 362**

**Hearing Date: September 9, 2020
Hearing Time: 9:30 a.m.**

**Hearing Place: Foley Federal Building, 300 Las
Vegas Blvd. South, Las Vegas, Nevada 89101,
Courtroom 2**

Creditor, Auctus Fund, LLC (hereinafter "Auctus" or the "Fund"), respectfully submits its Reply Memorandum to the Opposition of the Debtor, Player's Network, Inc. (hereinafter "PNTV," the "Debtor," or the "Company") to Auctus's Motion for an Order, Pursuant to 11 U.S.C. §§105(A), 363, and 541 (I) Authorizing Issuance of Conversion Notices; (II) Requiring Debtor to

1 Comply with the Notices; and (III) Deeming the Automatic Stay Inapplicable or, in the
2 Alternative, Granting Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362 (the “Motion”).

3 REPLY

4 Notwithstanding the Debtor’s claim to the contrary, the Ninth Circuit’s decision in *Decker*
5 *v. Advantage Fund Ltd.* squarely controls the issues presented in Auctus’s Motion. 362 F.3d (9th
6 Cir. 2004) (“Appellees are correct that unissued stock is not an interest of the debtor corporation
7 in property; it is merely equity in the corporation itself.”). The facts in *Decker* align with the facts
8 in this case. In both situations, the party that had been issued shares (as in *Decker*) or which was
9 seeking the issuance of shares (as with Auctus here) already had paid fair and valuable
10 consideration to the debtor to receive the right to convert to common stock. *Id.* (noting that
11 appellees had paid \$40 million for the preferred stock that included the option to convert to
12 common shares.) The *Decker* Court appropriately based its holding on the fact that the debtor
13 already had received consideration for the shares and would not receive any consideration by
14 voiding the stock issuance. *Id.* (““Since an action directed at recovery of corporate stock could
15 only affect equitable ownership of the corporation and would not restore property to the estate or
16 avoid an estate obligation, then it is not a transfer subject to question under Section 548.””)
17 (quoting *In re Curry and Sorenson*, 57 B.R. 824, 829 (B.A.P. 9th Cir. 1986)).

18 The Debtor in this case already has received full value in issuing the convertible Notes to
19 Auctus. Denying Auctus its right to convert the debt to common shares “would not restore
20 property to the estate or avoid an estate obligation.” *Id.* The Creditor respectfully submits that
21 this Court should reject the mischaracterization by the Debtor, grant Auctus’s Motion, and
22 authorize the right of Auctus to convert the debt into shares of common stock.

23 The Debtor has also mischaracterized the holding in *Lehtonen v. Time Warner, Inc.* (*In re*
24 *PurchasePro.com, Inc.*), 332 B.R. 417, 428 (Bankr. Nev. 2005).¹ The Bankruptcy Court in *In re*

25
26
27 ¹ The Debtor makes no real attempt to distinguish *In re CPT Corp.*, BKY No. 4-90-5759, 1992 Bankr.
28 LEXIS 1474, at *13 (Bankr. D. Minn. Sept. 21, 1992), other than to note it arose in another jurisdiction.
And the Debtor makes no attempt at all to distinguish the other cases Auctus has cited for the Court in its
Memorandum in support of its Motion.

1 *PurchasePro.com, Inc.* did not “specifically reject” *Decker*, but merely held it inapplicable to the
 2 specific facts before it. And those facts differed markedly from the facts in the instant case and as
 3 applicable to Auctus’s Motion.

4 In *PurchasePro.com, Inc.*, the trustee sought to avoid a prior transaction in which America
 5 Online, Inc. (“AOL”) and the debtor had replaced an initial warrant (the “Original Warrant”) with
 6 a new warrant (the “Amended Warrant”). The Original Warrant required AOL to pay a strike price
 7 to purchase the debtor’s shares, while the Amended Warrant eliminated the cash strike price
 8 altogether. *Id.* at 422. The trustee alleged that the amendment to the warrant, permitting AOL to
 9 acquire debtor’s stock without paying anything, unjustly enriched AOL by over \$57 million. *Id.*
 10 at 423.

11 The *PurchasePro.com, Inc.* Court distinguished the facts in that case from those in *Decker*
 12 on the grounds that AOL was able to obtain the shares without paying any strike price. It noted
 13 that the party in *Decker*, just as Auctus here, already had paid to the debtor fair value for the right
 14 to convert to the stock. *Id.* at 422 (“In short, rather than paying money for PP stock, AOL simply
 15 had to certify that it had caused others to use and pay for a certain minimum level of PP’s products
 16 and services.”)

17 The Bankruptcy Court in *PurchasePro.com, Inc.* grounded its decision on this factual
 18 distinction. *Id.* at 425 (“TW argues, however, that while the shares or warrants may very well be
 19 property in the hands of the shareholder, they are not property for the issuer. In this regard, they
 20 properly raise the policy concerns outlined in *Decker* and in *Curry & Sorensen* to the effect that
 21 avoidance of a stock issuance can have no real effect on creditors. . . . But are the same concerns
 22 about stock issuance present when the transaction is the exchange of one warrant for another?”)
 23 (citing *Decker* and *In re Curry and Sorenson*, 57 B.R. 824, 829 (B.A.P. 9th Cir. 1986)). The
 24 *PurchasePro.com, Inc.* court held that the trustee’s claim that the exchange of the Original
 25 Warrant for the Amended Warrant deprived the debtor of AOL cash upon exercise had AOL and
 26 the debtor not remove the strike price, and that “*avoidance of the warrant exchange could lead to*
 27 *creditor recoveries.*” *Id.* at 428 (emphasis added). That ability to recover the potential value of
 28 the restored strike price distinguishes *PurchasePro.com, Inc.* from the cases which govern the

1 analysis in the instant action and upon which Auctus relies in its Motion. *Id.* at 429 (“This theory
2 of recovery provides additional grounds to distinguish *Decker* and *Curry & Sorensen*. In those
3 cases, avoidance would not have resulted in recovery to creditors; it would simply rearrange
4 ownership interests.”)

5 The Debtor has failed to demonstrate that a denial of Auctus’s Motion could “lead to
6 creditor recoveries.” *Id.* In fact, as Auctus has amply demonstrated in its Memorandum in support
7 of its Motion, the opposite is true. If Auctus is permitted to convert some of its debt to PNTV
8 common stock, the Debtor’s total debt would be reduced, with no decline in its assets. In short,
9 allowing Auctus’s Motion is more likely to lead to creditor recoveries.

10 Aside from its failed attempt to distinguish Auctus’s cases, the Debtor makes no real
11 attempt to explain why this Court should deny Auctus’s motion. The Debtor fails to explain its
12 assertion that granting Auctus’s Motion would interfere with the Bankruptcy case when any viable
13 proposed plan of reorganization is curiously absent. Auctus has provided ample arguments to
14 show how granting its Motion would help facilitate the Bankruptcy case. In addition, while the
15 Debtor argues that allowing Auctus’s Motion will “severely” damage Debtor’s stock value, it also
16 claims that Auctus would obtain a “windfall” by receiving shares of a bankrupt public company.
17 The Debtor has provided no evidence that permitting Auctus to convert will cause any decline
18 whatsoever in the current prices of the Company’s public stock. Moreover, a cursory review of
19 public information demonstrates that the Debtor’s stock price has suffered a severe decline since
20 the Creditor provided the loan to the Debtor, and Auctus will not receive any possible “windfall.”

21 The Debtor has simply failed to provide any basis for this Court to disregard the Ninth
22 Circuit’s clear holding in *Decker* that supports a finding that the Debtor does not have a property
23 interest in the stock to be issued. *Decker*, 362 F.3d at 596. Auctus respectfully requests that the
24 Court grant its Motion.

CONCLUSION

For the reasons stated herein and in its Memorandum in support of its Motion, Auctus respectfully requests that this Court grant the Creditor Auctus Fund, LLC's Motion for Order Authorizing Conversions and issue an Order authorizing the Fund to issue and deliver Conversion Notices and requiring the Company and its Transfer Agent to issue Shares of PNTV common stock in accordance herewith. In the alternative, Auctus respectfully requests that this Court grant Auctus relief from the Automatic Stay in all respects and permit Auctus to issue Conversion Notice and thereby compelling PNTV and its TA to comply with such Notices.

Dated this 2nd day of September, 2020.

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